

1 HOUSE BILL NO. 48

2 INTRODUCED BY NEWMAN

3 BY REQUEST OF THE DEPARTMENT OF JUSTICE

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5 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE DUTIES OF AN ASSIGNED COUNSEL WHO
6 DETERMINES THAT AN APPEAL IN A CRIMINAL CASE WOULD BE FRIVOLOUS OR WHOLLY WITHOUT
7 MERIT; AND AMENDING SECTION 46-8-103, MCA."

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9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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11 **Section 1.** Section 46-8-103, MCA, is amended to read:

12 **"46-8-103. Duration of appointment.** (1) When counsel has been assigned, the assignment is effective
13 until final judgment, including any proceeding upon direct appeal to the Montana supreme court, unless relieved
14 by order of the court that assigned counsel or that has jurisdiction over the case.

15 (2) ~~If counsel finds the defendant's case on appeal to be wholly frivolous, counsel shall advise the court~~
16 ~~of that fact and request~~ determines that an appeal would be frivolous or wholly without merit, counsel shall file
17 a motion with the court requesting permission to withdraw. The motion must attest that counsel has concluded
18 that an appeal would be frivolous or wholly without merit after reviewing the entire record and researching
19 applicable statutes, case law, and rules and that the defendant has been advised of counsel's decision and of
20 the defendant's right to file a response. The ~~request~~ motion to withdraw must be accompanied by a
21 memorandum ~~referring to anything in the record that might arguably support the appeal~~ discussing any issues
22 that arguably support an appeal and discussing why those issues lack merit. The memorandum must include
23 a summary of the procedural history of the case and any jurisdictional problems with the appeal, together with
24 appropriate citations to the record and to the pertinent statutes, case law, and procedural rules bearing upon
25 each issue discussed in the memorandum. Upon filing the motion and memorandum with the court, counsel's
26 certificate of mailing must certify that copies of each filing were mailed to the local county attorney, the attorney
27 general's office, and the defendant. The defendant is entitled to ~~receive a copy of counsel's memorandum and~~
28 ~~to file a reply~~ response with the court."

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